

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION**

IN RE 2014 RADIOSHACK ERISA LITIGATION)) THIS DOCUMENT RELATES TO:)) ALL ACTIONS))

MASTER FILE NO. 4:14-cv-00959-O

**APPENDIX OF EXHIBITS TO RADIOSHACK DEFENDANTS' MOTION TO
DISMISS PLAINTIFFS' SECOND AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT AND TO STRIKE JURY DEMAND**

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Respectfully submitted,

/s/ Matthew A. Russell
MORGAN, LEWIS & BOCKIUS LLP

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2016, I filed the foregoing document using the Court's CM/ECF system, which will serve a copy of this document to all registered CM/ECF participants.

*/s/*Matthew A. Russell

Matthew A. Russell

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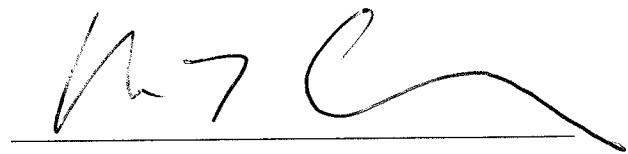
DECLARATION OF BRIAN T. ORTELERE IN SUPPORT OF THE RADIOSHACK DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT AND TO STRIKE JURY DEMAND

Pursuant to 28 U.S.C. § 1746, I, Brian T. Ortelere, state as follows:

1. I am over 18 years of age and competent to give the testimony set forth herein. I have personal knowledge of the facts and information contained in this Declaration.
2. I am an attorney with Morgan, Lewis & Bockius LLP, counsel for Defendants RadioShack 401(k) Plan Administrative Committee, RadioShack Puerto Rico 1165(e) Plan Administrative Committee, and the individual Defendants. (collectively, "Defendants").
3. I submit this Declaration in support of the RadioShack Defendants' Motion to Dismiss Plaintiffs' Second Amended Consolidated Class Action Complaint and to Strike Jury Demand.
4. On September 4, 2015, an attorney for the Plaintiffs in this matter, Edward W. Ciolko, sent to me by electronic mail a copy of a complaint filed by the Official Committee of Unsecured Creditors of RadioShack Corp. against some of the same Defendants in this action, filed in the Bankruptcy Court for the Northern District of Texas. *See RSH Liquidating Trust v. Magnacca et al.*, Adv. Pro. No. 15-04076, Complaint (Dkt. 1) (N.D. Tex. Bankr. Sept. 3, 2015).

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7th day of March, 2016.

A handwritten signature in black ink, appearing to read "B T C", is written over a horizontal line.

Brian T. Ortelere

In re 2014 RadioShack ERISA Litigation, Master File No. 4:14-cv-00959-O
Exhibit B to Defendants' Motion to Dismiss Plaintiffs' Second Amended Consolidated Class Action Complaint

<u>Plaintiffs' Alleged "Misrepresentations":</u>	<u>Plaintiffs' Allegations That RSH Stock was Imprudent Based on Public Information</u>
<ul style="list-style-type: none"> February 21, 2012: "Despite all this, Defendant Gooch stated, '[w]e have a strong balance sheet, are making progress in our mobility business, and expect to advance our business improvement initiatives in 2012.'" SAC ¶ 263. 	<ul style="list-style-type: none"> January 30, 2012, announcing preliminary fourth quarter 2011 results: "<i>We are disappointed</i>," Defendant Gooch admitted, noting 'positives were overshadowed by <i>significant decline</i> in our Sprint business." SAC ¶ 141 (emphasis in original). February 21, 2012: "[T]he Company reported Fourth Quarter 2011 operating income for the Company as \$30.5 million, compared with fourth quarter operating income of \$96.9 million, meaning RadioShack spent \$66.4 million dollars less in the fourth quarter 2011 than they spent in the fourth quarter 2010, but their net income still declined." SAC ¶ 263. "[T]he results caused RadioShack Stock to fall as low as \$7.26, coming within 11 cents of its 52-week low.....Defendant Gooch, despite his earlier optimistic statement, was forced to admit during a conference call with investors that the first quarter of 2012 would be 'extremely challenging' and 'even more difficult' than the fourth quarter of 2011." SAC ¶ 146. "The gross margin took a dive to 34.8 percent from 41 percent..." SAC ¶ 147. "On February 21, 2012, RadioShack Stock closed at \$6.95." SAC ¶ 148.
<ul style="list-style-type: none"> "[O]n May 17, 2012, the Board of Directors announced a second quarter cash dividend of \$0.125 per share of Company Stock, payable on June 22, 2012." SAC ¶ 264. 	<ul style="list-style-type: none"> "Regardless of the declared dividend, industry analysts were wary. Jonathan Heller, a seventeen year veteran at Bloomberg Financial Markets cautioned: 'The market is not always right, but in my experience, if the dividend appears too good to be true, and that's the only reason you're buying a particular name, it's time to take a step back and review the situation. ... <i>Revenue has been stagnant and earnings have declined for several years. ... RadioShack management recently said it intends to keep the dividend intact, but the market isn't buying it.</i>'" SAC ¶ 154. July 25, 2012: "Defendant Gooch said '[o]verall, <i>our business performed below expectations</i> during the second quarter,' and again admitted "<i>[w]e are disappointed</i>." SAC ¶ 157 (emphasis in original).

<u>Plaintiffs' Alleged "Misrepresentations":</u>	<u>Plaintiffs' Allegations That RSH Stock was Imprudent Based on Public Information</u>
<ul style="list-style-type: none"> “On a conference call on April 23, 2013, Defendant Magnacca stated: ‘In the weeks that I have been with the Company, I have been assessing the Business from a number of angles, and identifying gaps and opportunities, both short-term and, very importantly, where I want to move this Company in the long term. From this, I have distilled several key learnings that have led me to focus on an initial set of priorities to begin driving our turnaround – building the right management team, reinvigorating the store experience, and jump starting our powerful brand.’” SAC ¶ 265. “Defendant Magnacca said: ‘I have also studied the existing retail format and store experience and believe there is a significant opportunity to refresh and improve how we present the brand, how we deliver on our brand promise, and how our customer experiences shopping with us. <i>I know we have some gaps and improvements that need to take place.... RadioShack has a uniquely strong franchise. . . I believe in this brand,</i>’ Defendant Magnacca continued, stating ‘I am confident we can renew its relevancy.’” SAC ¶ 266 (emphasis added). 	<ul style="list-style-type: none"> “On April 23, 2013, RadioShack reported results for the first quarter 2013. <i>See</i> RadioShack Form 10-Q, dated Apr. 23, 2012. Therein, the Company reported a <i>net loss of \$43 million, or \$0.43 per share</i>. This was RadioShack’s fifth consecutive quarter of red ink. Moreover, revenue fell 7%.” SAC ¶ 184 (emphasis in original). “Janney Montgomery Scott analyst David Strasser called the first quarter 2013 results ‘<i>a disaster by any stretch of the imagination.</i>’” SAC ¶ 186 (emphasis in original).
<ul style="list-style-type: none"> July 23, 2013: “Defendant Magnacca stated: ‘Overall, we have made solid progress on the initiatives that I outlined on the first quarter call – repositioning our brand, revamping our product assortment and reinvigorating our stores. Importantly, we drove comp store sales growth in the second quarter, a first time since the fourth quarter of 2010. This was driven in part by increased sales for the sixth consecutive quarter in our high-margin signature line of profits.’” SAC ¶ 270. 	<ul style="list-style-type: none"> “On July 23, 2013, RadioShack reported a net loss of \$53.1 million, or 53 cents per share, for the second quarter 2013.” SAC ¶¶ 267-68. “Magnacca stated: ‘In response to the reported losses, Our profitability was not where we would have liked...Looking ahead, we expect the turnaround to take several quarters, and during that time our results may vary from quarter to quarter as we make strategic changes to improve our long-term financial performance.’” SAC ¶ 269. “On the <i>same day</i>, RadioShack announced that Holly F. Etlin, a managing partner of Alix Partners, a consulting firm that specializes in providing restructuring advice, would be its acting CFO.” SAC ¶ 189 (emphases added).

<u>Plaintiffs' Alleged "Misrepresentations":</u>	<u>Plaintiffs' Allegations That RSH Stock was Imprudent Based on Public Information</u>
	<ul style="list-style-type: none"> “On August 1, 2013, Standard & Poor’s Ratings Services downgraded RadioShack’s bonds to CCC— eight steps below investment grade – warning that the retailer might default in less than a year.” SAC ¶ 190. “On August 2, 2013, S&P also lowered its view of RadioShack’s liquidity from ‘adequate’ to ‘weak.’” SAC ¶ 191.
<ul style="list-style-type: none"> October 22, 2013: “In response to the reported losses, Defendant Magnacca said, ‘[a]s we have said, we expect the work to take several quarters and during that time our results will vary quarter to quarter. . . We have an aggressive plan to reinvigorate our store experience this fall in nearly all of our stores.’” SAC ¶ 271. “In a conference call on October 22, 2013, Defendant Magnacca stated: ‘Our performance is not out of line with our expectations for where we are in the turnaround process. As we have said, we <i>did not expect the path to turning the Company around would be smooth, and without the occasional speed bump</i>. We are doing a lot of good things for the long-term success for our business, but <i>they may not show up in our results for a while</i>. And I’m more convinced than ever about the <i>potential</i> for RadioShack to engineer a meaningful business transformation that re-establishes our relevancy for consumers.’” SAC ¶ 273 (emphases added). 	<ul style="list-style-type: none"> “In a conference call on October 22, 2013, Defendant Magnacca stated: ‘Let me start out by emphasizing that our results for the third quarter reflect the ongoing reality that, <i>despite our progress in a number of areas, we have a lot of work to do in addressing a great number of legacy operational issues.</i>’” SAC ¶ 273 (emphasis added). “On October 22, 2013, RadioShack reported a net loss of \$112.4 million, or \$1.11 per share, its seventh consecutive quarter of netlosses, for the third quarter 2013.” SAC ¶ 271. “On December 26, 2013, TheStreet.com reported...that this year’s holiday season will mark the last one for RadioShack in its current form... ‘The main reason for RadioShack’s extinction: it sells nothing of relevance for new tech upgrade cycles or the actual devices in the new tech upgrade cycle,’ Sozzi says. Ouch. So, what can go in the empty storefronts? ‘Google pop up shops, or even Wal-Mart pick up locations,’ Sozzi says. <i>In all fairness, Wall Street has been predicting RadioShack’s demise for many years.</i> Perhaps the prediction could turn out the other way around, and RadioShack re-energizes 2014’s comeback kid. Well, don’t count on it.” SAC ¶ 193 (emphases in original).

<u>Plaintiffs' Alleged "Misrepresentations":</u>	<u>Plaintiffs' Allegations That RSH Stock was Imprudent Based on Public Information</u>
<ul style="list-style-type: none"> “On a conference call in March 2014, Defendant Magnacca stated: ‘As we noted in the past, the RadioShack turnaround will take time, and our results will vary as we make strategic changes to improve our long-term financial performance. <i>To put it another way, we believe our fourth-quarter numbers do not reflect the progress we are making on the critical five pillars underpinning our turnaround strategy.</i> <p><i>Our turnaround plan is on track.</i> We have a detailed strategy and initiatives defined, and we’re executing against them. Without minimizing the challenges ahead of us, I am confident we can continue to execute our turnaround plan and position RadioShack for the future.”” SAC ¶ 274 (emphases in original).</p> “CFO John Feray also had this to say on the March 4, 2014 earnings call: ‘<i>And clearly put, I think there’s a great opportunity for this business to succeed. This is not atypical to what my experience has been in the past, in the past six years. Everything that I have seen this management team do and is doing is on a pathway to profitability, and it involves the overall turnaround....</i>When you look at all those things and realize that there is a certain amount of things that are clearly in our ability to control in terms of the processes and improve the store execution, things that retailers can control, I feel like there is a great deal of success and opportunity as it relates to RadioShack.’” SAC ¶ 275 (emphasis in original). 	<ul style="list-style-type: none"> “Based on the dismal news, RadioShack Stock plunged more than 20%. It closed on March 4, 2014, at \$2.25.” SAC ¶ 200. “Also on March 4, 2014, a Dow Jones Institutional News article...reported in relevant part ‘4Q results ‘highlight a company with few options,’ . . . Firm says RSH’s earnings press release ‘reads somewhat like the Circuit City press releases of 2008,’ before it filed for bankruptcy. ‘Circuit City talked of some wins, and other positives including store remodels.... <i>The simple math is that gross profit was \$288 million in Q4 versus SG&A dollars of \$389 million. We don’t see a path to reversing this decline.</i>’” SAC ¶ 201 (emphasis in original). “Just a day later, an analyst at Griffen Securities, Inc., was pessimistic about RadioShack’s future. ‘RadioShack’s time has passed.... It is a dinosaur . . . Ultimately, I think it will go out of business.’” SAC ¶ 202. “On March 5, 2014, RadioShack Stock closed at \$2.16.” SAC ¶ 203. “Indeed, Defendants would have had to have been <i>hiding in a cave to not know</i> that the Company’s prospects for returning to stability, much less its heyday, were nil.” SAC ¶ 205 (emphasis added).

<u>Plaintiffs' Alleged "Misrepresentations":</u>	<u>Plaintiffs' Allegations That RSH Stock was Imprudent Based on Public Information</u>
<ul style="list-style-type: none"> June 10, 2014: "Magnacca stated: 'While we faced headwinds in our sector of retail, we have a clear vision for RadioShack's future and a detailed strategy to turn the business around. Our entire team is focused on executing our vision, adapting to the environment, and managing our balance sheet, while driving sustainable change.... We have many powerful ways to tell our story to current and new customers, with the great customer experience, powerful promotions, and a strong marketing plan that all support the turnaround efforts of the brand. Our entire team is focused on driving results in our business, and executing the detailed steps of the turnaround plan. That is not to say we have a smooth road ahead. We recognize the significant challenges we still face with operational and financial hurdles, but we're working aggressively on all fronts to manage through those challenges, and to realize the value is in the RadioShack brand experience and position RadioShack for a dynamic future.'" SAC ¶ 276. "John Feray added: 'We believe our current liquidity will provide the financial flexibility to continue executing our strategic turnaround plan over the next 12 months This plan anticipates that sales and gross margins will improve over the next 12 months in the mobility and retail areas of our business, based upon the merchandise initiatives Joe discussed earlier We're focused on executing the overall turnaround plan, and we took, we believe the 2018 credit agreement gives us the flexibility to implement our overall strategic turnaround strategy for RadioShack.'" SAC ¶ 277. 	<ul style="list-style-type: none"> "John Feray added: 'Our liquidity position has been negatively impacted by the operating losses over the past two years, including the losses in the first quarter Our ability to maintain the sufficient liquidity to fund our operations and execute our strategic turnaround plan <i>is contingent on improving the current trend</i> in our operating results.'" SAC ¶ 277 (emphasis added). "On June 10, 2014, RadioShack Stock closed at \$1.38." SAC ¶ 211. "By June 12, 2014, Scott Tilghman, an analyst at B. Riley & Co., also wrote, citing 'minimal liquidation value[,]' and that 'a turnaround is nearly impossible for the company...' First-quarter revenue was 29 percent lower than three years ago. Same-store sales have fallen in 12 of the last 13 quarters, and declines are getting worse." SAC ¶ 212. "On the whole, most analysts said that a bankruptcy proceeding was likely for the Company. 'There's no chance that this stays outside of a restructuring,' said David Tawil, co-founder and portfolio manager of Maglan Capital, which follows distressed companies. He believed a formal liquidation is more likely. He added, 'I don't think anybody will miss RadioShack if it goes out of business.'" SAC ¶ 213. "Also on June 20, 2014, an article titled "Your Last and Final Warning on RadioShack" published on 24/7 Wall St. reported: Going, going, gone! RadioShack Corp. (NYSE: RSH) has broken the buck. Shares traded under \$1 on Friday. If you are a shareholder who is surprised about this, then about the only excuse would be is if your name is Rip Van Winkle. Please consider this a final warning in RadioShack." SAC ¶ 214.

<u>Plaintiffs' Alleged "Misrepresentations":</u>	<u>Plaintiffs' Allegations That RSH Stock was Imprudent Based on Public Information</u>
<ul style="list-style-type: none"> “On September 11, 2014, Defendant Magnacca stated: ‘Every day, we see consumers responding positively to the key elements of our turnaround strategy, such as the actions we have taken on reinvigorating our store experience, revamping our product assortment, and creating a stronger inventory position. In fact, comparable store sales continued to improve during the quarter as a result of our focus on in-stock performance, greater product innovation, and better customer service. That trend is continuing into the third quarter, and I am proud to say that innovation has become part of the RadioShack DNA.’” SAC ¶ 278. 	<ul style="list-style-type: none"> “On September 11, 2014, Defendant Magnacca stated: ‘It is clear that the current pace of our turnaround <i>is simply not fast enough to address our near-term liquidity needs. This is a fact</i>, despite the steady progress we are making with our strategic initiatives.’” SAC ¶ 278 (emphasis added). “Observers translated this as ‘We surrender!’ The analysts piled on. One analyst remarked ‘Don’t get caught with the ticker symbol ‘RSH’ in your 401(k).’ Yet another said, ‘We believe the company will default or restructure in some form that is tantamount to a default within the next six months.’ SAC ¶ 226. “On September 12, 2014, Fitch downgraded RadioShack further into junk to a ‘C’ from a ‘CC’ stating that it believed RadioShack would face a shortage of funding going into the crucial holiday season. And the Washington Post reported of RadioShack’s plan, ‘[a]nalysts say the comeback strategy and a cash infusion might not be enough for RadioShack to mount a comeback.’” SAC ¶ 227. “On September 12, 2014, RadioShack Stock closed at \$0.91.” SAC ¶ 228. “Between September 15, 2014 and December 2014, RadioShack attempted to staunch the bleeding by seeking cash infusions from third parties to help alleviate its liquidity shortage. <i>Most analysts, however, dismissed such moves as a short-term solution to a longer-term issue.</i>” SAC ¶ 229 (emphasis added).